

MR. LIVINGSTON'S STRONG ARGUMENTS
AGAINST
CAPITAL PUNISHMENT,
REVIEWED.

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W. H. BENTON, AUTHOR & EDITOR
1861

Amity August 26. 1850.
Sir. Please to accept this Essay on
condition, that you bestow on it one
carefull reading; I think of calling to
ask your opinion, in a few days.
Yours as Every William Limbong

Mr. Livingston's Strong Reasons Reviewed,

IN

An Essay on the subject of Capital Punishment for the crime of Murder.

IN TWO PARTS. BY W. TIMLOW.

PART I. The attention of the public has often been called to the importance of repealing the law that inflicts death for the crime of murder. The friends of such a repeal refer us with much assurance to a pamphlet said to contain the "able arguments" of the Hon. Edward Livingston on this subject; and to a report made by a select committee, to the Legislature of New York. In the pamphlets are found the "strong reasons" in which their friends confide. In the pamphlet taken from Mr. Livingston's book, we see the hand of a master; like an ingenious advocate, he admits what he would not deny. He admits that the right to inflict death exists; "but that it must be in defence either of individual or social existence." He wishes to be distinctly understood, however, "that though the right to punish with death might be abstractly conceded to exist, in certain societies and under certain circumstances, which might make it necessary, yet composed as society now is, these circumstances cannot reasonably even be supposed to occur, that therefore no necessity and of course no right to inflict death as a punishment does exist." (Page 4.)

Having made these concessions, Mr. Livingston proceeds to tell us why the murderer should not be hung. And here, however wise or otherwise we are told that to inflict the penalty of law increases crime. His own words are: "The most serious and intense reflection has brought my mind to the conclusion, not only that it fails in any repressive effect, but that it promotes the crime." (Page 7.) Of this assertion Mr. Livingston says: "The cause is not very easy to discover, and still more difficult to explain." The only attempt he makes at explanation is by charging a large portion of the crimes in the world to the existence of law. He selected for his purpose the French Revolution, and the many executions formerly in England. He inquires: "If the punishment of death had not been sanctioned by the ordinary laws of those kingdoms, would the one have been deluged with the blood of innocence, of worth, of patriotism, and science in her revolution? would the best and noblest lives of the other have been lost on the scaffold in her civil

broils," (Page 10.) Mr. Livingston might have said this also is "difficult to explain," for absurdities are difficult things to handle. But with such difficulties his arguments are not to be stayed, for he adds another why death should not be inflicted for the crime of murder, viz : "The ferocious character impressed on the people by this punishment. To sustain this bold assertion we are referred to an expected execution in one of our sister States. He says : "The victim was brought out"—all eyes were fixed upon him—"they waited with strong desire"—"they grew impatient"—"it was prolonged, and they were outrageous." "Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry." But this ferocious scene of blood, Mr. Livingston says, was in a part of the State where the people had not been indulged with such a spectacle. (Page 17.) Perhaps the people of whom Mr. Livingston says these things, would hardly admit the "ferocious character" ascribed to them ; but if admitted, it is still difficult to see how the death penalty should make a people so "ferocious" who had never witnessed an execution. For be it remembered Mr. Livingston says it was in a part of the State where "the people had not yet been indulged with such a spectacle." How the death penalty should make a people so "ferocious" where it had never been seen, we are not informed.

With these inconsistencies in full view, Mr. Livingston calls on others for consistency. He says : "Be consistent—restore capital punishment in other crimes, or abolish it in this." But this is only another inconsistency, with or without design ; for, if Mr. Livingston can see consistency in punishing all crime with the same degree of penalty, he is less wise than thought to be. The time was, when the least guilty "should be beaten with few stripes." But passing these inconsistencies, how did it happen that Mr. Livingston overlooked, or purposely omitted, the important fact that all his arguments brought to bear upon the abolition of capital punishment, might be urged for the abolition of all punishment for all crimes.

"Does penalty increase crime," then it must be so with the penalty of all law. "Is there uncertainty and difficulty in the execution of the death penalty," so in all penalty. There may be difficulty and uncertainty in the administration of justice, but this can only be a reason why officers of justice should be the more careful in the discharge of their important duties, and no reason why law should be disarmed of all its force.

Neither can we think with Mr. Livingston, that the denial of crime should arrest the course of justice. He had heard in the dungeon "the earnest asseverations of innocence, with an energy almost superhuman, summoning his false accuser and mistaken judge to meet him before the throne of God." "Such an appeal to the high tribunal" Mr. Livingston furnishes as proof of innocence, and a reason why the penalty should be abolished. But we have yet to learn that the denial of guilt proves innocence. The guilty usually deny their guilt, and it is understood that when put on trial they are generally instructed to plead "Not guilty." If denial of guilt is to be received as proof of innocence in case of the death penalty, why not when other penalties are inflicted?

Who would have thought that a mind like the author reviewed, would attempt to palm on the public the "notion" that the denial of crime is to be taken as proof of innocence. Denial is expected; but truth usually prevails, in the confession of nearly all who in these days die on the gallows. True, there are a few exceptions. The writer once heard one of these gallows denials. The wretched man on the scaffold made the following declaration: "My heart and my hands are clear of the blood of my son!" In this he denied the sayings of his wife, the mother of the murdered son, the oath of a living son, with circumstantial testimony that could not admit of a doubt. At this moment he that had just preached a sermon on the occasion, ran up to him in astonishment and said: "Sir, for God's sake, don't die with a lie in your mouth!" He made no answer. The scene was dreadful. The silence of death was there. The sheriff drew the cap—then, and not till then, the hope of pardon seemed to fail him. A sudden change was visible—the sullen indifference was followed by a violent tremor—he trembled, fell and died. This melancholy occurrence took place in a part of a State where the people had seen a like dreadful sight before. There was weeping, and trembling, too; but nothing of a "ferocious" character manifested.

But as the Committee soon to be noticed have followed close in the same track, we may leave Mr. Livingston's pamphlet for the present, after admitting its adaptedness for an advocate at the bar, to confuse a jury and defeat the reign of justice, and after saying we hope Mr. Livingston did not design blasphemy, where he ranks the death of Christ with the execution of murderers. (Page 11.)

The Select Committee, in their report to the Legislature of New York in March, 1847, (the Hon. Messrs. Perkins and Balcom dissenting,)

tell us that they entered on their labors "with the most profound convictions of its magnitude and importance." They highly esteem the wisdom of their "ancestors," and "strongly deprecate all movements to destroy those ancient land-marks. But they are not willing to close their "eyes to the brilliant light which modern investigation has shed upon their path-way." In their new light they hasten to tell us that the penalty of death for murder is unjust—unjust because "society has no right to take away life." For this assertion no proof is offered. They think it unjust, however, "because no human tribunal can ascertain the future condition of the criminal." But if they could, the committee have not told us how such knowledge could effect the justice of the case. We suppose it best, however, that human tribunals are only ordained to ascertain the guilt or innocence of the man while here, without meddling with his hereafter.

The Committee further contend that it is unjust, "because the rightful jurisdiction of the civil magistrate over any member of the community, can never rise higher than that of a father over his son during his minority." This we call singular logic for gentlemen to use, who elsewhere defend imprisonment, even for life. They admit that power is awarded to the magistrate for "protection and security." But then it seems to be only protection in crime. We had thought that the law was made for the lawless, and disobedient—"for murderers;" but had not got so far into the sight as to see that the law was made for the "security and protection" of villainy. They tell us truly that the "sole consideration on which the individual yields his reserved rights, is a guarantee of security and protection. But when they proceed and say that the penalty of law cannot be inflicted consistently with "security and protection," we see a sophistry not to be admitted.

Protection in crime is foreign from any thing secured by a surrender of natural rights, in the formation of civil society. We suppose the power of civil society to be a power to protect, as far as possible, the whole fraternity against violence and crime. But the Committee seem to have written their book with a design to excuse the murderer. They speak of him very tenderly—he is called "innocent," poor, friendless, suffering wrongfully. Then they assume the right to charge the Government with "unmitigated tyranny."

As if to sustain such a groundless charge, they give us a learned dissertation on the brains of a man, leaving it undetermined whether the

"mind be material or not." They tell us of the locality and office of certain portions of the brains, with their developments and effects, with all the precision of an experienced phrenologist; and show pretty clearly that men may be sick—that they may be poor and friendless—that in their poverty and wretchedness they might possibly, for money or envy, kill a fellow-being. Their pity increases, as they wander among diseased brains and morbid livers until they have "become painfully convinced that very many of the victims who have been sacrificed on the altar of public justice have been condemned not for crime, not for depravity of heart, but for the sin of having diseased brains or morbid livers." Who would have looked for such a declaration from men possessing the "brilliant light of modern investigation." It might be thought uncharitable to think that a committee possessing so much "light" were friendly to murderers, or that they had not banished all symptoms of insanity from their own councils. Yet it is difficult to conceive how a jury could convict that committee on the charge of any crime, if the plea of insanity were set up and their report to the Assembly offered in evidence.

The Committee are understood to admit the fallibility of all human courts, and all human testimony. But in their "brilliant light" they in their own view come to conclusions equal to perfect demonstration. Most men are aware of the fallibility of all things human. They know that there is disease in the world, as well as error and wickedness; they have no doubt that some thieves and murderers may be insane; and they have no doubt that all transgressors are under the influence of a wrong mind. But would any thing less than monomania suggest that, because men may be sick or wicked, therefore law is injurious?

The Committee talk as if law were against disease, against innocence and not against crime. Why else the attempt to avoid the question and darken council by words? To what question are they talking, when they say, "In our variable climate, as is but too well known, diseases of the lungs are exceeding prevalent, and among the diseases of that organ none are more frequent than asthma"? (Page 16.)

If the Committee did not mean to excuse crime, nor fasten on Government the unjust charge of "unmitigated tyranny," how did it happen that in filling out their defence of suffering "innocent humanity," they did not stumble on one case of murder, where the testimony was not only not denied, but defied denial. But not one. With the Committee

all innocence, all diseased lungs or morbid livers, all innocent, "suffering for the sin of having diseased brains or morbid livers." Why are we told nothing of the many cold-blooded murders where malice, with intent to kill, took the place of every other disease? Why not one word of regret for the murdered or the outraged laws of the land? Why no notice of the thousands who, on the scaffold, confess the crime and the justice of punishment? Not a word. With the Hon. Committee, murder seems a small offence when compared with the law, which they call "unmitigated tyranny." They follow Mr. Livingston in saying that the death penalty for murder "increases crime and makes human life more insecure." We may hope that at this point insanity, and not a design to blaspheme, led them to reproach God. For after saying "the penalties attached to the violation of the Divine law are inconceivably awful," they say that by the severity of such threatenings, "crime is increased." In their view the threatenings of God increase crime in proportion to their severity.

That the threatenings of God are awful, is a serious truth; but who gave the Committee liberty to impeach Divine wisdom? They say because the threatenings of God are severe, sinners hope "to escape the wrath of an offended Deity, and evade the terrible penalty due to their transgressions." As it happens, the Committee have no control over the enactments of heaven; and surely they have no right to say that the awful threatenings of God increase crime. He that made the most awful threatenings on record, well knew the effect they would produce. Is it not blasphemy, then, to say it was to increase crime?

Having followed the Committee thus far, we find them turned theologians, where they tell us that they "approach this branch of the subject with great humility." They "recognize the sovereignty of God and the supremacy of his laws over all human enactments." They made "a careful examination of the scriptures" themselves, "and the writings of eminent commentators." Such a recognition of the "Divine sovereignty," such "a careful examination of the scriptures," with the writings of "eminent commentators," was doubtless a proper preparation for their important work. Thus prepared, they refer to GEN. 9. 6. They still appear very careful and humble, for they "would not touch the sacred ark with hands unhallowed." If the text means what it says—yes, what it says, as plain honest men understand it—they "would not dare to recommend a repeal of our statutes." But after

much research in scriptures, commentators and different translations, behold ! they find it does not mean what it plainly says ! Without telling us what it does mean, they are sure it does not mean what it says ! They seem to know what the text says, and think they know with equal certainty that it does not mean what it says. However unwillingly, to this certainty they are driven from the fact that Cain and Lamech were not hung for murder ; i. e., if we understand them, because Cain and Lamech did not suffer under a law that had no existence. Hundreds of years passed away, after the death of Abel, before God said " Whoso sheddeth man's blood, by man shall his blood be shed." But these sage expounders have found that the Bible does not mean what it says, because the penalty of an *expost-facto* law was not inflicted on Cain and Lamech.

From this specimen of their theology, we may see what confidence is to be placed in their remaining expositions ; for if the Bible does not mean what it says—because men were not punished by a law that did not exist—then folly is abundantly manifest.

PART II. Having noticed the pamphlets as proposed, we will now attempt to shew a more secure and certain way. In doing this, remarks will first be made on the crime of murder and its proper punishment. Secondly, answer some objections urged against capital punishment ; then shew the necessity of the law that punishes murder with death.

I. Remarks on the crime of murder, and its punishment.

It is admitted, or supposed to be, that the penalty of all law ought to be regulated on the principle of justice. Proper punishment for a crime, must be neither more nor less than the crime deserves. By murder, is meant, taking the life of a human being, with forethought, and intent to kill. This sin is dreadful beyond description. It exhibits the worst spirit possible in the murderer. The history of the murderer seems to indicate the absence of all feelings proper for the human heart. Not only an enemy, but the unoffending,—a wife, a friend, a benefactor,—are often the victims of cool, calculating malice, with intent to kill. The helpless infant, the unprotected female, the man of gray hairs, have, without distinction, been the unhappy subjects, in whose blood the murderer has dipped his polluted hands. All the tender feelings, all the noble sympathy, all the pity and kindness of our better nature, are extinct. It is a spirit with the deepest stain of guilt, reck-

less in its course, regardless of consequences, fearless of every thing but detection. Something of the cruelty of this fiend-like spirit, is seen in the dreadful fact, that it deprives the murdered of all that is dear. That life is taken from him, which he would not have surrendered for worlds. He is deprived of the mournful privilege of saying farewell to the afflicted mother and helpless children. This is often literally true, (as in the case of Hasbrouck, Suydam and Adams, of recent date.) But worse than this, the murdered man is deprived of a moment to lift up his heart to God. However wicked and thoughtless, the worst of men desire time to say, "God have mercy on me, a sinner." But in the hand of a murderer, the spirit, prepared or unprepared, is sent at once into eternity.

Dreadful, inexpressibly dreadful! What punishment is equal to the magnitude of a crime like this? In all ages since the flood, throughout the known world, murder has been punished with death. About 2,300 years before Christ, God said, "Whoso sheddeth man's blood, by man shall his blood be shed." About 1,400 years before Christ, it was written, "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses." Num. xxxv. 30. In the days of Christ, this law was still in force. "Ye have heard that it was said by them of old time, thou shalt not kill, and whosoever shall kill, shall be in danger of the judgment;" i. e., the different modes of putting to death among the Jews, viz: stoning, hanging, or burning. He that murdered was in danger of death, in one of these ways. "In danger of the judgment"—the sentence of the judges who sat in the gate to try murderers. Their judgment was always *death*, but varied in form. Of this judgment, the Sadducees might be afraid, but with the state of the heart and a future world they had no concern. This made it necessary that Christ should explain the subject, looking beyond the temporal death of the murderer. He speaks of the hatred, enmity and slander, implied in the word "Raca," and denying God, as implied in the word "fool," as subjecting the murderer not only to the death of the body, but to the death of the soul also. Matt. v. 22.

The murderer in heart and action, then, is in danger of the judgment, and of the council, and of hell fire. Surely the Saviour thought the law in force. He affirms the danger of death, temporal and eternal. The New Testament goes beyond the Old, in what is called the severity of the punishment for murder. The original enactment said nothing

about the other world ; but Christ and the Apostles take it beyond the grave. John says, "No murderer hath eternal life abiding in him," and Jesus says, they are in danger of hell fire. From the days of Christ down to the present time, death has been the punishment for murder. Some murderers may have escaped, and others may have suffered unjustly, yet the general tenor of law, and the moral sense of all civilized nations, have been the same since the flood.

II. But objections are urged against the law. Let us examine some of them.

1st. Some say, "IT IS CRUEL to hang for murder." To make this objection valid, it must be shown that the penalty of the law inflicted, exceeds the magnitude of the crime ; or the objection would lie equally against the penalty of all law. To punish him that commits the crime, is not cruel—the cruelty is with the murderer. Why forget the agony and dying groans of the murdered ? With the murderer, is the cruelty. Look at the blood, while warm, flowing from the veins of the helpless victim. Look at the wretch, glorying in his work, who has just inflicted the wound of death, and the penalty of the law will appear like MERCY, compared with the CRIME.

2d Objection.—"The law of God against murder has been abolished, and no human law can of right take its place." This is a grave objection, and an assumption that may merit an examination. That there was a divine law to execute the murderer, the objection admits ; but says it has been repealed. If the law has been repealed, we may well ask, WHEN and by WHOM ? How long has the Christian world been in the dark on this subject ? The law is plain, but where is the repeal recorded ? This ought to be shown, before the objector takes so bold a stand against the law of God and man. They say, it was done at the commencement of the Christian dispensation. But by whom was it done ? Not by Christ or his Apostles ; they confirmed the law, and spake of the penalty as extending beyond what the Jews had supposed. The fact is, it has never been abolished. It did not begin with the Jewish nation, or end with that nation.

3d Objection.—"The law against murder was given to Israel, when in the wilderness, when they could not punish in any other way ; but was to cease when they got to Canaan, where they would be firmly settled, and could imprison for life." Answer : So far from this being true, these laws were ordained to be enforced when they got into Ca-

naan. "Thou shalt keep, therefore, his statutes and his commandments, which I command thee this day, that it may be well with thee and with thy children after thee, that thou mayest prolong thy days upon the earth, which the Lord thy God giveth thee forever. For ye shall pass over Jordan to go in to possess the land which the Lord your God giveth you, and you shall possess it, and dwell therein. And ye shall observe to do all the statutes which I set before you this day." DEUT. xi. 31, 32. There was no law peculiar to their stay in the wilderness; the laws there given were to be taken to Canaan.

4th Objection.—"They are not fit to die, and may repent, if suffered to live." Answer: True, indeed, while a man lives, he may repent. But to turn aside the law of God in the case of the murderer, is the most certain way to prevent his repentance. To postpone repentance, is a well known propensity of human nature. As far as repentance is concerned, the convict is more likely to repent, when he knows the time is fixed, and his fate settled. While the criminal expects pardon from man, he seeks none from God. While expected pardon and years of coming life engage their attention, they cast off fear, and restrain prayer. But let their days be numbered, and the question settled—then, if ever, they will call for mercy. There is reason to fear that pious, well-meaning clergymen may have injured the public, in the progress of justice, as well as the individual concerned. Pressing him with the hope of pardon, may have produced that sorrow that worketh death. He may appear penitent, ask a Bible, ask prayer, and then be told what a sound convert he is. More. If to be hung, let him be clothed "with a long, white, flowing robe." Let him mount the platform "with a firm step." Let him express his anxiety to depart, "that he may be with the Lord." Make the scaffold honorable, cast the crime into the shade, and praise God that another soul has gone to heaven. But doing this, is but little short of offering a premium for murder. That the man is not fit to die, is not for the objector to settle. Murder can never be prevented, while we so justify the crime as to condemn the penalty of the law. Let the scaffold be clothed with shame, let terror surround the scene, then all will see that the minister of justice "beareth not the sword in vain."

5th Objection.—It is said, "God forgave Cain, the first murderer, therefore murderers ought not to be hung." If God did forgive him, it is not found in the Bible. But, so far from this, Cain was punished

to the extent of the law he broke. Cain did not break a revealed law. God had never said, "Ye shall not kill," "ye shall do no murder." Why, then, was Cain punished at all? Only because he broke the law planted in his heart. Cain, whether he would or not, had a desire that others should care for him, and this as a law bound him to care for others. When he did that to his brother, which he could not desire his brother should do to him, he was guilty; and for this he was punished. He was cursed from the earth to be a fugitive and a vagabond during life, ever feeling exposed to death. This law allowed him to walk upon the earth, but placed a scorpion in the soul, which made him cry—"Every one that findeth me shall slay me."

III. The law that inflicts the punishment of death for the crime of murder, is necessary, that all crime may be punished according to the magnitude of its guilt. As no crime known to law is equal to murder, so the punishment must be greater than the law inflicts for any other crime. Imprisonment and fine to any extent are thought proper for other crimes not equally heinous, which makes such punishment unsuitable for the crime of murder.

The law is necessary, that all crime may be punished in some way. Without this law, there might be murder that could not be punished at all. Suppose a man, sentenced to imprisonment for life for other crimes, should murder a man, how could he be punished for this latter crime? His former crimes are supposed to merit imprisonment for life, which he may be actually suffering. But now he becomes a murderer with impunity, but for the law in question. Abolish the punishment of death for murder, and no law can reach the case.

The punishment of death for murder is necessary, in order to obey God. "Whoso killeth any person, the murderer shall be put to death." NUMB. 35: 30. Other crimes were punished with death; but it is nowhere said, that the punishment might not be pardoned, except in one case besides murder. It is nowhere said that the glutton, the drunkard, the idolater, the fornicator, or any such crimes, should not be pardoned, or the punishment commuted.

When a man-slayer had fled to a city of refuge, he might not leave the city; if he did, he was an out-law; he might be slain without crime. "Ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land until the death of the high priest." NUMB. 35: 32. This law could not be altered,

and was designed to preserve life in safety ; for in no case could the unfortunate man go out of the city in safety until the death of the ruling high priest. All pardoning power was interdicted. "Ye shall take no satisfaction for him that is fled to the city of his refuge." In like manner, the law could not be altered, that the murderer could live—"Moreover, ye shall take no satisfaction for the life of the murderer, which is guilty of death : but he shall be put to death." NUMB. 35 : 31. Had this law been left like some other laws where life was involved, it might have been supposed, that change of country or other circumstances might make punishment by death unnecessary. But not so. "Ye shall take no satisfaction for the life of the murderer." "The land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it." No amount of gold could prevail ; no change of punishment could be accepted. Repentance and tears are too late—God had settled it on a foundation not to be moved. Just as certain as the Lord has said : "He that believeth not the Son, shall not see life ; but the wrath of God abideth on him"—JOHN 9 : 36. Just so certain, and by the same authority has he said, "ye shall take no satisfaction for the life of the murderer, but he shall be surely put to death." With this view of the subject, I dare not charge the law which inflicts death for the crime of murder, upon some barbarous age or nation. To expunge this law from the Bible, is to reject the authority of God. To expunge this law from the statute book of the State, is to reject the Bible upon the subject. But for the possibility of error, and the uncertainty of human testimony, no pardoning power could be proper in the case of murder. For murder, in the sense of the law, there was no city of refuge. Nor could we rightfully have a pardoning power lodged with our Governor, but for the imperfection of human tribunals. As the law in question was enacted before the Jewish nation had a being—as it was in force during their political existence—as it was confirmed by Christ and his apostles—and as it has been the law of all nations to the present day, we hope it may yet remain : a terror to evil doers, and a defence to those who do well.



